

Food and Nutrition Service, USDA

§ 210.21

(8) Results of the State agency's review of schools' compliance with the food safety inspection requirement in § 210.13(b) by November 15 following each of school years 2005–2006 through 2008–2009, beginning November 15, 2006. The report will be based on data supplied by the school food authorities in accordance with § 210.15(a)(7).

(b) *Recordkeeping summary.* Participating State agencies are required to maintain records to demonstrate compliance with Program requirements. The records include but are not limited to:

(1) Accounting records and source documents to control the receipt, custody and disbursement of Federal Program funds as required under § 210.5(a);

(2) Documentation supporting all school food authority claims paid by the State agency as required under § 210.5(d);

(3) Documentation to support the amount the State agency reported having used for State revenue matching as required under § 210.17(h);

(4) Records supporting the State agency's review of net cash resources as required under § 210.19(a);

(5) Reports on the results of investigations of complaints received or irregularities noted in connection with Program operations as required under § 210.19(a)

(6) Records of all reviews and audits, including records of action taken to correct Program violations; and records of fiscal action taken, including documentation of recoveries made;

(7) State agency criteria for selecting schools for reviews and small school food authorities for follow-up reviews;

(8) Documentation of action taken to disallow improper claims submitted by school food authorities, as required by § 210.19(c) and as determined through claims processing, resulting from actions such as reviews, audits and USDA audits;

(9) Records of USDA audit findings, State agency's and school food authorities' responses to them and of corrective action taken as required by § 210.22(a);

(10) Records pertaining to civil rights responsibilities as defined under § 210.23(b);

(11) Records pertaining to the annual food preference survey of school food authorities as required by § 250.13(k) of this chapter; and

(12) Records supplied by the school food authorities showing the number of food safety inspections obtained by schools for each of school years 2005–2006 through 2008–2009.

[53 FR 29147, Aug. 2, 1988, as amended at 56 FR 32948, July 17, 1991; 56 FR 55527, Oct. 28, 1991; 64 FR 50741, Sept. 20, 1999; 70 FR 34630, June 15, 2005]

Subpart E—State Agency and School Food Authority Responsibilities

§ 210.21 Procurement.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR part 3016 or 7 CFR part 3019, as applicable concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in this part and 7 CFR part 3015, 7 CFR part 3016 and 7 CFR part 3019, as applicable, do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* State agencies or school food authorities may use their own procedures for procurement with program funds to the extent that:

§ 210.22

7 CFR Ch. II (1–1–07 Edition)

(1) Procurements by public school food authorities comply with applicable State and local laws and the standards set forth in 7 CFR part 3016; and

(2) Procurements by nonprofit private school food authorities comply with the standards set forth in 7 CFR part 3019.

(d) *Buy American.*—(1) *Definition of domestic commodity or product.* In this paragraph (d), the term ‘domestic commodity or product’ means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) *Requirement.* (i) *In general.* Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) *Limitations.* Paragraph (d)(2)(i) of this section shall apply only to—

(A) A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school lunch program under this part.

(3) *Applicability to Hawaii.* Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.

(e) *Restrictions on the sale of milk.* A school food authority participating in the Program, or a person approved by a school participating in the Program, must not directly or indirectly restrict the sale or marketing of fluid milk (as described in paragraph(m)(1)(ii) of this section) at any time or in any place on school premises or at any school-sponsored event.

[53 FR 29147, Aug. 2, 1988, as amended at 64 FR 50741, Sept. 20, 1999; 70 FR 70033, Nov. 21, 2005; 71 FR 39516, July 13, 2006]

§ 210.22 Audits.

(a) *General.* Unless otherwise exempt, audits at the State and school food authority levels shall be conducted in accordance with Office of Management and Budget Circular A–133 and the De-

partment’s implementing regulations at 7 CFR part 3052. For availability of the OMB Circular mentioned in this paragraph, please refer to 5 CFR 1310.3.

(b) *Audit procedure.* These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in 7 CFR part 3015.

[53 FR 29147, Aug. 2, 1988, as amended at 71 FR 39516, July 13, 2006]

§ 210.23 Other responsibilities.

(a) *Free and reduced price lunches and meal supplements.* State agencies and school food authorities shall ensure that lunches and meal supplements are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child’s eligibility for free or reduced price lunches and meal supplements is to be made in accordance with 7 CFR part 245.

(b) *Civil rights.* In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. State agencies and school food authorities shall comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FNS Instruction 113–6.

(c) *Retention of records.* State agencies and school food authorities may